

INTERSTATE MINING AND DEVELOPMENT PROPERTIES, INC.

IBLA 94-881

Decided December 9, 1997

Appeal from decisions by the Idaho State Office, Bureau of Land Management, declaring mining claims abandoned and void for failure to pay annual rental fees or obtain a small miner exemption by August 31, 1993. IMC 50659-IMC 50663, IMC 61113, IMC 61549, IMC 80468-IMC 80472, IMC 83900, IMC 84374-IMC 84381, IMC 84552-IMC 84556, IMC 85423-IMC 85427, IMC 97547-IMC 97551.

Reversed in part; affirmed in part.

1. Evidence: Generally--Mining Claims: Abandonment--Mining Claims: Rental or Claim Maintenance Fees: Generally

There is no requirement that a mining claimant file a written release in order to abandon a mining claim. A mining claim is abandoned when the claimant relinquishes possession and control of the ground with an intent to abandon the claim. A release is evidence that mining claims were abandoned prior to Aug. 31, 1993, even though it was not submitted to BLM until after Aug. 31, 1993.

APPEARANCES: George Eaton, President, Interstate Mining and Development Properties, Inc.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Interstate Mining and Development Properties, Inc. (Interstate), has appealed two Decisions by the Idaho State Office, Bureau of Land Management (BLM). The first, dated June 29, 1994, declared 36 placer mining claims abandoned and void for failure to pay by August 31, 1993, annual rental fees of \$100 per year for the 1993 and 1994 assessment years, or obtain a small miner exemption, as required by the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374 (1992). It held 26 of the claims to be void by operation of law and rejected exemption certificates filed for the 10 other claims because BLM records showed Interstate to hold 36 mining claims and not to qualify for an exemption. The second Decision, dated August 16, 1994, held the 10 claims abandoned and void for failure to meet the requirements of the Appropriations Act and also stated that the

June 29, 1994, Decision had "failed to address the fact that claimant did not file evidence of assessment work or a notice of intent to hold the above claims by December 30, 1993, as required by the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744) and Federal regulation 43 CFR 3833.2."

Interstate asserts that, when it filed for a small miner exemption, "[i]n reality we had released those other claims, but we had not given a written statement to that effect" and had not been "notified that we had to given [sic] an official release." It also states that it "was under the impression that we did not have to do the assessment work at the time we filed for our Small Miner's Exemption."

The Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993, Pub. L. No. 102-381, 106 Stat. 1374, 1378 (1992), required that

for each unpatented mining claim, mill or tunnel site on federally owned lands, in lieu of the assessment work requirements contained in the Mining Law of 1872 (30 U.S.C. 28-28e), and the filing requirements contained in section 314 (a) and (c) of the Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1744 (a) and (c)), each claimant shall, except as provided otherwise by this Act, pay a claim rental fee of \$100 to the Secretary of the Interior or his designee on or before August 31, 1993 in order for the claimant to hold such unpatented mining claim, mill or tunnel site for the assessment year ending at noon on September 1, 1993 * * *.

A substantially identical provision required mineral claimants to also pay by August 31, 1993, a \$100 rental fee to hold an unpatented mining claim, mill or tunnel site during the assessment year beginning September 1, 1993.

Id. The legislation further provided that "failure to make the annual payment of the claim rental fee as required by this Act shall conclusively constitute an abandonment of the unpatented mining claim, mill or tunnel site by the claimant * * *." Id. at 1379.

The Act, however, created an exemption for a mineral claimant with 10 or fewer claims who is either producing under a valid notice or plan of operations not less than \$1,500 and not more than \$800,000 in gross revenues per year or is "performing exploration work to disclose, expose, or otherwise make known possible valuable mineralization * * * under a valid notice or plan of operation" and has fewer than 10 acres of unreclaimed surface. Id. at 1378. Such a claimant could "elect to either pay the claim rental fee for such year or in lieu thereof do assessment work required by the Mining Law of 1872," meet the requirements of 43 U.S.C. §§ 1744(a) and (c) (1994), "and certify the performance of such assessment work to the Secretary by August 31, 1993." Id.

The record contains two exemption certificates Interstate filed with BLM on August 30, 1993, which list the Leggett Placer, the Leggett Placer #2, the Mystery #1 through #4, and the Piece of Pie Placer #1 through #4. After receiving BLM's Decisions, Interstate sent BLM a letter stating that it had not been "aware that we must give written notice releasing the 26 additional claim" and provided a release of 26 claims.

In a number of recent decisions, the Board has addressed the issue presented when a mineral claimant seeks to obtain a small miner exemption, and BLM records show that more than 10 claims are held by the claimant. Finding the issue to be essentially one of whether the mineral claimant had abandoned excess claims, the Board has held that

[s]o long as a claimant who sought a small miner exemption can establish that, with respect to any claims in excess of 10, the elements of abandonment predated August 31, 1993, he or she has met the statutory and regulatory requirements with respect to the limitation of claim ownership, regardless of the point in time at which these facts are communicated to BLM.

The Big Blue Sapphire Co., 138 IBLA 1, 5 (1997); accord Little Bear Mining & Exploration, Inc., 138 IBLA 304 (1997); William J. Montgomery, 138 IBLA 31 (1997); Burbank Gold, Ltd., 138 IBLA 17 (1997).

There was no requirement that Interstate file a written release in order to abandon its mining claims. Rather, a mining claim is abandoned when the claimant relinquishes possession and control of the ground with an intent to abandon the claim. The Big Blue Sapphire Co., *supra*, at 4. An affidavit of assessment work which lists the same 10 or fewer claims for which an exemption certificate has been filed is evidence that the claimant intended to abandon other claims, even though the affidavit was filed with BLM after August 31, 1993. William J. Montgomery, *supra*, at 34-35; Burbank Gold, Ltd., *supra*, at 20. Likewise, minutes of the Board of Directors meeting adopting a motion to abandon claims is evidence of abandonment. Little Bear Mining & Exploration, Inc., *supra*, at 305-06. In this case, Interstate has provided a release. In accord with the cases cited, it has shown that, prior to August 31, 1993, it abandoned its mining claims not listed in its exemption certificates. Accordingly, BLM's June 29 and August 16, 1994, Decisions are reversed as to the Leggett Placer, the Leggett Placer #2, the Mystery #1 through #4 and the Piece of Pie Placer #1 through #4. The June 29, 1994, Decision is affirmed as to the Tippie Placer #1 through #4, the Mystery #5, and the Piece of Pie Placer #5.

Interstate has also responded to BLM's finding that it failed to file evidence of assessment work or a notice of intent to hold the claims by December 30, 1993, as required by FLPMA. As quoted above, the rental fee was imposed by Congress "in lieu of the assessment work requirements contained in the Mining Law of 1872 * * * and the filing requirements contained in [43 U.S.C.] section 314 (a) and (c)." Pub. L. No. 102-381,

106 Stat. 1374, 1378 (1992) (emphasis supplied). The effect of the provision is to require mining claimants to pay a rental fee instead of performing assessment work. Contrary to common understanding, however, the Act did not exempt mining claimants who hold fewer than 10 claims from paying the rental fee. Rather, it allows a claimant who holds 10 or fewer claims to "elect to either pay the claim rental fee * * * or in lieu thereof do assessment work required by the Mining Law of 1872," meet the requirements of 43 U.S.C. § 1744(a) (1994), "and certify the performance of such assessment work to the Secretary by August 31, 1993." Id. (emphasis supplied). The BLM correctly understood that a claimant who files exemption forms is required to undertake assessment work and file an affidavit as required by 43 U.S.C. § 1744(a) (1994), but was mistaken in also stating that a notice of intent to hold could be filed. See Lee Jesse Peterson, 133 IBLA 381, 384 (1995).

Although the August 16, 1994, Decision states that Interstate did not file evidence of assessment work and points out that 43 U.S.C. § 1744(c) (1994) provides that failure to do so constitutes abandonment of the claims, it does not declare any mining claims abandoned and void for this reason. Upon receiving the case files from the Board, BLM may wish to examine all of the records for Interstate's claims to determine whether the requirement was met.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. 4.1, the July 20, 1994, Decision of the Idaho State Office is reversed in part and affirmed in part, and its August 16, 1994, Decision is reversed.

Will A. Irwin
Administrative Judge

I concur:

James P. Terry
Administrative Judge